

No. 4:07-CV-16-H(2)

Defendant.

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The facts alleged in the complaint in the instant matter comprise part of the same transaction or occurrence as the facts alleged in the complaint filed by plaintiff in Horton v. Shull, et al., 5:04-CV-227-BO (E.D.N.C. Mar. 28, 2005). That case was dismissed with prejudice on March 28, 2005. "A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Federated Dept. Stores v. Moitie, 452 U.S. 394, 398 (1981) (citing Commissioner v. Sunnen, 333 U.S. 591, 597 (1948), Cromwell v. County of Sac, 94 U.S. 351, 352-353 (1877)).

Because plaintiff is simply attempting to relitigate issues and claims that were previously raised or could have been raised in the prior action against one of the same defendants named in the previous suit, this action must be dismissed. See Federated Dept. Stores, 452 US at 398; Fed. R. Civ. P. 41(b) (involuntary dismissal under this rule, unless otherwise noted, operates as an adjudication on the merits). Therefore, the government's motion is GRANTED, and this case is hereby DISMISSED. The clerk is directed to close the case.

This 30<sup>th</sup> day of October 2007.



MALCOLM J. HOWARD  
Senior United States District Judge

At Greenville, NC  
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